



National Automobile Dealers Association
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NATIONAL AUTOMOBILE DEALERS ASSOCIATION
STATEMENT TO THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
TAX REFORM WORKING GROUPS

The National Automobile Dealers Association (NADA) appreciates the opportunity to provide its perspective on issues of importance to the automobile and truck dealer industry to the Tax Reform Working Groups of the Committee on Ways and Means (the Committee). NADA represents nearly 16,000 franchised new car and truck dealers, employing almost one million Americans. NADA's members sell all makes and models of vehicles, both domestic and international, including medium and heavy-duty trucks. Automobile dealers are a significant tax base for local communities, and the nation as a whole, providing over \$600 billion in sales, and \$46 billion in payroll, as well as supporting other local businesses.¹

The Need for Comprehensive Tax Reform. NADA's diverse membership includes dealerships of all sizes, the vast majority of which are family-owned. These dealers operate in a variety of entity forms, including sole proprietorships, partnerships, limited liability corporations, and S corporations, as well as some traditional C corporations. Therefore, any effort to reform only the corporate tax code could have a detrimental effect on small businesses, such as automobile dealerships, that operate as "pass-through" businesses, which pay taxes at individual income tax rates. These businesses could lose the benefit of critical tax preferences (i.e., deductions, credits and exclusions) and gain none of the benefits of a lower corporate tax rate.

As the Tax Reform Working Groups and the Committee as a whole pursue tax reform, NADA urges a comprehensive approach that addresses both the individual tax code and the corporate tax code to promote fairness in the treatment of all businesses, regardless of their entity form. In this regard, NADA applauds Chairman Camp and the Committee for supporting comprehensive tax-reform that includes businesses of all sizes and entities, and for working through regular order to pass tax reform legislation.

Estate Tax Relief. The estate tax is a critical issue for automobile and truck dealerships, as it directly impacts the ability for these dealerships to be passed down from generation to generation. A significant number of dealerships are multi-generational, and many dealers intend to pass on their stores to the next generation.

NADA was pleased that many provisions that it had traditionally supported, such as permanency of the \$5 million exemption (indexed for inflation), stepped-up basis, and full spousal transfer of any unused exemption amount, were included in the American Taxpayer Relief Act of 2012. However, for some dealers, the imposition of a 40 percent tax above the exemption still threatens

¹ Data from *NADA Data 2012*, National Automobile Dealers Association, <http://www.nada.org/Publications/NADADATA/>. Figures reflect economic activity in 2011.

their ability to pass down the dealership when the tax comes due after an owner's death. Assets such as land and single-use showroom facilities cannot be liquidated to pay the tax without destroying the viability of the dealership. Therefore, NADA supports elimination (or, alternatively, significant reduction) of the estate tax in order to allow for the succession of family-owned dealerships.

LIFO and LCM. A majority of automobile and truck dealerships use the "last in, first out" (LIFO) accounting method for new vehicles, used vehicles, and parts. For dealerships using LIFO accounting, preservation of the method is critical for inventory management as vehicles and parts increase in price over time.

In addition, the lower of cost or market (LCM) accounting method is a related accounting practice that is primarily used by dealerships for used vehicles. Because the value of used inventory can change rapidly based on market conditions, this is an important tool for dealers to account for the actual value of these vehicles.

Repeal of the LIFO and LCM accounting methods would force dealerships to report an artificially increased tax liability, which would have a devastating impact on dealerships and their employees as in many instances the increased tax burden would threaten the continued viability of many dealerships. Furthermore, repeal would be especially pernicious if paired with corporate-only reform, which would increase the tax liability for pass-through dealers without providing commensurate tax rate relief.

Permanent Extension and Expansion of Section 512(b)(13)(E). NADA supports permanent extension and expansion of the current law treatment of certain payments between tax-exempt organizations and controlled organizations under Section 512(b)(13)(E). This provision provides that interest, rents, royalties and annuities received by a tax-exempt organization from a controlled organization will only be taxed as unrelated business taxable income (UBTI) when the payment exceeds fair market value (i.e. the amount which would have been paid if such payment met the requirements of Section 482). Section 512(b)(13)(E) only applies to payments made under binding written contracts (or their renewals under substantially similar terms) in effect on the date of enactment of the provision (i.e., August 17, 2006) (so-called "grandfathered contracts").

Section 512(b)(13)(E) corrected an anomaly which resulted in tax-exempt organizations becoming liable for UBTI on payments of passive income even when they reflected fair market amounts. For example, many tax-exempt organizations receive rents at an "arm's length" amount from taxable subsidiaries that were established and operate for non-abusive purposes. Prior to the enactment of Section 512(b)(13)(E), these tax-exempt organizations were subject to tax, even though their receipt of rents from unrelated organizations under the exact same terms would not be subject to tax.

Section 512(b)(13)(E) is currently scheduled to expire at the end of 2013. Permanent extension of the provision would enable tax-exempt organizations to continue to enter into arm's length, fair market value transactions with controlled organizations without any additional tax burden that

would reduce the resources they can devote to their tax exempt purposes. Furthermore, NADA supports expansion of Section 512(b)(13)(E) beyond payments pursuant to grandfathered contracts such that it applies to payments made under any contract (regardless of the date of such contract). This expansion would ensure consistent treatment of similarly situated tax-exempt organizations that engage in arm's length, fair market value transactions with controlled organizations, regardless of the date of the underlying contract.

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NADA appreciates the opportunity to comment on tax issues of importance to America's franchised new automobile dealers. If you have further questions, please contact Joshua Heit of our staff at 202-547-5500 or jheit@nada.org.